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| 10/035,701      | 11/09/2001  | David Charles Potts  | KCC-13,776          | 3940             |

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EXAMINER

PRATT, CHRISTOPHER C

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1771

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |  |                                     |  |
|--|--|-------------------------------------|--|
| <p align="center"><b>Office Action Summary</b></p> | <b>Application No.</b><br>10/035,701   | <b>Applicant(s)</b><br>POTTS ET AL. |  |
|  | <b>Examiner</b><br>Christopher C Pratt | <b>Art Unit</b><br>1771             |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**P riod for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 4-8,14,15,18,19,28,29,35,37,45-49,51 and 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,9-13,16,17,20-27,30-34,36,38-44,50,53 and 54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All   b) ☐ Some \* c) ☐ None of:  
     1. ☐ Certified copies of the priority documents have been received.  
     2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I, claims 3, 12, 17, 23, 27, 36, 44, comprises a tri-block copolymer, Species II, claims 4-6, 18, 28, 45-47 comprises a polycationic material, Species III, claims 7, 19, 29, 35, 48, comprises an antibody, Species IV, claims 8, 37, 49, comprises saponin, Species V, claims 14 and 51, comprises alkoxylated alcohol, Species VI, claims 15 and 52, comprises octylpolyglycoside.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, 1-2, 9-11, 13, 16, 20-22, 24-26, 30-34, 38-43, 50, and 53-54 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Melanie Rauch on 8/11/03 a provisional election was made without traverse to prosecute the invention of species I, claims 1-3, 9-12, 13, 16-17, 20-23, 24-27, 30-34, 36, 38-44, 50, and 53-54. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-8, 14-15, 18-19, 28-29, 35, 37, 45-49, 51-52 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-3, 9-13, 16-17, 20-27, 30-34, 36, 38-44, 50, and 53-54 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 6350711B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of 6350711 claim all the limitations of the instant applications, but include additional limitations such that '711 is more narrow than the broader claims of the instant invention. In essence, the claims of '711 are a species of the more generic genus represented by the instant invention.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 32-34, 36, and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 32 is indefinite because of the phrase "said absorbent core comprising cell means for altering...." This phrase does not limit the metes and bounds of the claim. What is the intended meaning of "cell means?" Is applicant attempting to invoke 112 six paragraph?

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3, 12-13, 16-17, 20, 23-25, 27, 31-34, 36, 40-41, 43-44, 50, and 53-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Saferstein et al (4616644).

Saferstein is concerned with the creation of a personal care absorbent article comprising a porous nonwoven web (col. 6, line 10) treated with an agent suitable for altering red blood cells comprising polyethylene oxide (col. 4, lines 12-15).

Saferstein discloses applicant's claimed percentage (col. 6, line 55).

Saferstein discloses the addition of a superabsorbent material (col. 5, lines 35-42).

With respect to claim 16, Saferstein discloses a cover material comprising a fluid permeable film, a substantially fluid impervious backing material, and an inner absorbent core (fig. 3). Saferstein teaches applying the fluid treatment agent disposed on either side of the cover layer (col. 5, lines 19-20). Applying the agent on the inside of the cover would place the agent in direct contact with the nonwoven web, which is equivalent to treating the inner absorbent core.

With respect to claims 24-25, Saferstein discloses the nonwoven material to be synthetic (col. 6, lines 18-19).

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With respect to claim 32, the composite material of Saferstein would have the same ability to preclude red blood cells from reducing a fluid uptake rate of said superabsorbent because Saferstein utilizes the same materials in the same proportions as applicant.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 9 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saferstein et al (4616644).

Saferstein does not provide specific measurements for pore size; however, Saferstein teaches perforating the nonwoven web to increase porosity (col. 6, lines 10-11). It would have been obvious to a person having ordinary skill in the art to form Saferstein's pores to have a size within about 10 to about 200 microns. Such a modification would have been motivated by the desire to optimize the fluid transport properties of the web.

With respect to claim 38, Saferstein's nonwoven web is porous because it absorbs fluid; however, Saferstein does not specify the size of the pores. It would have been obvious to a person having ordinary skill in the art to form Saferstein's absorbent core to have pore sizes within applicant's claimed range. Such a modification would have been motivated by the desire to optimize the absorbent properties of the core.

12. Claims 10-11, 21-22, 26, 30, 39, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saferstein et al (4616644) in view of Weber et al (6221460).

Saferstein teaches the absorbent material to be used as a bandage, but fails to teach a catamenial device used to absorb menses. Saferstein fails to teach a porosity gradient and a particular method of forming the nonwoven material.

Weber is concerned with the creation of a personal care absorbent article. Weber teaches bandages to be equivalent to feminine personal care articles (abstract, col. 1, lines 15-18, and col. 4, lines 3-5 and 21-25). It would have been obvious to a person having ordinary skill in the art to utilize Saferstein's absorbent material as a feminine care article to absorb menses. Such a modification would have been motivated by the desire to expand the commercial uses of Saferstein's invention.

Weber also teaches the desirability of utilizing a porosity gradient in nonwoven absorbent materials (col. 7, lines 50-58) as well as a method of forming a nonwoven material (col. 6, lines 1-20). It would have been obvious to a person having ordinary skill in the art to provide the absorbent nonwoven material of Saferstein with a porosity gradient by the method taught by Weber. Such a modification would have been motivated by the desire to improve the liquid uptake properties of Saferstein's absorbent material.

Saferstein also fails to teach the absorbent material to be woven; however, Weber teaches woven materials to be equivalent to nonwoven absorbent materials (col. 5, lines 51-53). It would have been obvious to a person having ordinary skill in the art to



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utilize a woven fabric in the absorbent material of Saferstein. Such a combination would have been motivated by the desire to improve the dimensional stability and tear strength of the absorbent composite.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Varona (5853628) provides additional teachings to control pore size and create pore size gradients in absorbent nonwoven materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read 'Christopher C. Pratt', with a stylized flourish at the end.

Christopher C. Pratt  
August 25, 2003